

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Rick Olseen,

Complainant,

vs.

Bob Barrett and Barrett for  
State Representative Committee,

Respondent.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
PREHEARING CONFERENCE**

**TO: Complainant Rick Olseen and Respondent Bob Barrett--Barrett for State Representative Committee.**

On November 19, 2012, Rick Olseen filed a Campaign Complaint with the Office of Administrative Hearings alleging that Bob Barrett and Barrett for State Representative Committee violated Minnesota Statutes § 211B.06 (false campaign material) in connection with campaign material they prepared and/or disseminated regarding a candidate in the race for the seat in the Minnesota House of Representative from District 32B.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.06. This determination is described in more detail in the attached Memorandum.

**THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN** that this matter is scheduled for a telephone scheduling conference to be held by telephone before the undersigned Administrative Law Judge at **10:00 a.m. on Friday, December 21, 2012.** The scheduling conference will be conducted by telephone conference call. At the appointed time, you must call: **1-888-742-5095.** When the system asks for your numeric pass code, enter **249 440 7275#** on your phone and you will be connected to the conference.

At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved, the number of potential witnesses and exhibits should the matter proceed to hearing, possible dates for the hearing, and determining whether the matter may be disposed of without an evidentiary hearing.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at P.O. Box 64620, St. Paul, MN 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TDD).

Dated: November 21, 2012

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JAMES E. LAFAVE  
Administrative Law Judge

## MEMORANDUM

Complainant Rick Olseen was a candidate for the seat in the Minnesota House of Representatives from District 32B<sup>1</sup>, in the November 6, 2012, general election. The Respondent, Bob Barrett, was also a candidate for that seat.<sup>2</sup>

The Complaint alleges that between November 1 and November 6, 2012, the Respondents sent a mailing to voters in the District that stated “Bob’s opponent didn’t serve on the Education committee while a state senator, even though our schools need help.” The Complaint asserts Mr. Olseen (“Bob’s opponent”) did serve two years on the Education Policy Committee.

### Legal Standard

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>3</sup> For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.<sup>4</sup> A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.<sup>5</sup>

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<sup>1</sup> Minnesota House District 32B encompasses most of Chisago County and includes the cities of Lindstrom, Center City and North Branch.

<sup>2</sup> Mr. Barrett defeated Mr. Olseen 10,644 to 10,251. See Office of the Secretary of State, Results for State Representative District 32B.

<sup>3</sup> *Barry, et al., v. St. Anthony-New Brighton Independent School District, et al.*, 781 N.W.2d 898, 902 (Minn. App. 2010).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

## Minnesota Statutes § 211B.06

Minnesota Statutes § 211B.06 prohibits the preparation and dissemination of false campaign material or paid political advertising with respect to the personal or political character or acts of a candidate. In order to be found to have violated this section, a person must intentionally participate in the preparation, dissemination or broadcast of campaign material or advertising that the person knows is false or communicates with reckless disregard of whether it is false.

As interpreted by the Minnesota Supreme Court, Section 211B.06 is directed against false statements of specific facts.<sup>6</sup> The term “reckless disregard” was added to the statute in 1998 to expressly incorporate the “actual malice” standard from *New York Times v. Sullivan*.<sup>7</sup> Based on this standard, the Complainants have the burden at the hearing to show by clear and convincing evidence that the Respondents prepared or disseminated the campaign material knowing that it was false or did so with reckless disregard for its truth or falsity.<sup>8</sup>

The allegation in the Complaint concerns political acts of candidate Olseen and is a statement capable of being proven true or false. The Administrative Law Judge concludes that the Complaint has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.06.

This matter will proceed to a prehearing conference on the alleged violation of Minn. Stat. § 211B.06 as indicated in this Order.

**J. E. L.**

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<sup>6</sup> *Kennedy v. Voss*, 304 N.W.2d 299, 300 (Minn. 1981); See, *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language); *Bank v. Egan*, 60 N.W.2d 257, 259 (Minn. 1953); *Hawley v. Wallace*, 163 N.W. 127, 128 (Minn. 1917).

<sup>7</sup> *New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

<sup>8</sup> *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968); *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). See also *Riley v. Jankowski*, 713 N.W. 2d 379 (Minn. App.) review denied (Minn. 2006).